

REMARKS

Reconsideration of the present application is respectfully requested.

Applicant has amended claims 1, 4, 5, 10, 14 and 18; and cancelled claims 6-9 and 21-24.

The claim rejections under 35 U.S. C. §112.

Claim 9 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with a written description requirement.

Applicant cancels claim 9 without prejudice to its consideration in a continuing application, and further without admission that this claim fails to comply with the first paragraph of § 112.

Claim 1, 3-5, 9 and 17-20 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Applicant has amended claim 1 to have proper antecedent basis and make it more definite. Applicant has cancelled claim 9.

With these amendments, Applicant has addressed these rejections under § 112, and withdrawal of these rejections is respectfully requested.

The rejections under 35 U.S.C. § 103.

Claims 1 and 3-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,325,543 to Ausnit and U.S. Patent No. 6,186,663 to Ausnit.

Applicant has amended claim 1 to include that the endstop obstructs movement of the slider past the second end, and also that the first and second profiles are higher than the top edge of the gusset. Applicant believes that a fair reading of Ausnit '543 does not disclose obstructing endstops of any kind, and further that Ausnit '663 does not disclose attaching the two profiles together by an endstop.

Applicant's amendment also addresses the comment in paragraph 6 regarding use of the word "proximate." Applicant has amended claim 1 to recite that the profiles are higher than the top edge of the gusset.

With regards to claim 18, Applicant has amended claim 18 to refer to the gusset having a topmost edge which is lower than either of the profiles.

As amended, claim 1 includes elements not found in the combination of Ausnit '543 and Ausnit '663. Since a *prima facie* case of obviousness cannot be established by these references, Applicant respectfully requests withdrawal of the rejection.

Applicant has cancelled claims 6-9 and 21-24 without prejudice to their consideration in a continuing application.

Claims 10-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,358,653 to Mock and '543 Ausnit.

Applicant has amended claim 10 to include that the folded gusset extends unbroken between sidewalls. Applicant believes a fair reading of Mock does not disclose such a feature. Reviewing the left side of FIG. 2 of Mock, it can be seen that there is a break between the sidewalls of Mock's bag, as evidenced by the internal details of Mock's bag that are visible through the break. Further, Applicant notes that nowhere does Mock disclose a folded gusset or a folded side. Further, Applicant notes that a broken left side as shown in FIG. 2 is consistent with the open view shown in FIG. 4 (i.e., the break of Mock permit the mouth to open more widely; therefore, Mock does not inherently have a folded gusset). Further yet, claim 10 includes a gusset that is folded, which is nowhere shown and described in Mock.

Applicant's unbroken gusset is shown in FIGS. 17, 19, 20, 21, and 22, as originally filed. Consistent with this original disclosure, Applicant has amended two paragraphs of the text of the specification to include the word "unbroken."

Lacking all elements of claim 10, the combination of Mock and Ausnit do not establish a *prima facie* case of obviousness. Applicant respectfully requests withdrawal of the rejection of claims 10-16.

CLOSING

Applicants have amended claims 1, 4, 5, 10, 14, and 18; and cancelled claim 6-9. Applicant respectfully requests issuance of an Advisory Action for pending claims 1, 3-5, and 10-20.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede any basis for rejections or objections in the Office Action. For those rejections based upon a combination of references and/or modification of references, there is no admission that the cited combinations are legally permitted, properly motivated, operable, or modifiable. Further, with regards to the various statements made in the Office Action concerning any prior art, the teachings of any prior art are to be interpreted under the law. Applicants make no admissions as to any prior art. The remarks herein are provided simply to overcome the rejections and objections made in the Office Action in an expedient fashion.

The undersigned welcomes a telephonic interview with the Examiner if the Examiner believes that such an interview would facilitate resolution of any outstanding issues.

Respectfully submitted,

By: /John V. Daniluck/
John V. Daniluck, Reg. No. 40,581
Bingham McHale LLP
10 West Market Street, #2700
Indianapolis, IN 46204
(317) 968-5529 – phone
(317) 236-9907 - fax